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October 4, 2017

FILED VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: PRWireless, Inc. d/b/a Open Mobile
CC Docket No. 96-45; WC Docket Nos. 10-90, 11-42 and 05-337;
WT Docket No. 10-208

Dear Ms. Dortch:

On behalf of PRWireless, Inc. d/b/a Open Mobile, we enclose for filing an Emergency Petition for Waiver and Other Relief.

Should you have any questions, please contact undersigned counsel directly.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. LaFuria", is positioned above the printed name and title.

David A. LaFuria
Steven M. Chernoff
Counsel for PRWireless, Inc.

cc: Chairman Ajit Pai
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Dr. Jay Schwarz
Nathan Eagan
Claude Aiken
Louis Peraertz
Amy Bender

Travis Litman
Jamie Susskind
Donald Stockdale
Kris Monteith
Trent Harkrader
Ryan Palmer

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CC Docket No. 96-45
)	WC Docket No. 10-90
Emergency Request by PRWireless, Inc.)	WC Docket No. 11-42
)	WT Docket No. 10-208
For Waiver and Certain Other Relief)	WC Docket No. 05-337
)	

EMERGENCY PETITION FOR WAIVER AND OTHER RELIEF

“Hurricane Maria has had a catastrophic impact on Puerto Rico’s communications networks... Unfortunately, getting Puerto Rico’s communications networks up and running will be a challenging process, particularly given the power outages throughout the island. But the FCC stands ready to do whatever we can to help with this task.”

- Chairman Ajit Pai, Sept. 21, 2017

PRWireless, Inc., d/b/a Open Mobile (“Open Mobile” or “Company”) files this Emergency Petition pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, 47 C.F.R. § 1.3, to seek an emergency waiver of Universal Service Fund rules to enable the Company to restore critical wireless service in Puerto Rico following the epic devastation caused by Hurricane Maria.

I. INTRODUCTION

On Wednesday, September 20, 2017, Hurricane Maria barreled directly into Puerto Rico. Bearing winds over 150 mph and dumping several feet of rain, the Category 4 hurricane wrought unprecedented destruction, tearing roofs off buildings, leveling homes, flooding

communities, and destroying the entire electrical and telecommunications grid. Two weeks later, most of the island is still without electricity and full restoration is expected to take months. Generators are being deployed, but fuel to run them is scarce, endangering patients in hospitals that are low on power or have lost it already. Senior citizens are now enduring a heat wave with no air conditioning, and many cannot access medical treatment or medication. Puerto Rico Governor Ricardo Rosselló described the unfolding situation as a “humanitarian disaster involving 3.4 million U.S. citizens.”¹

According to the Commission’s latest status report, 87.9% of cell sites on the island are out of service, 33 of the 78 counties report 100% cell sites out of service (mostly in rural areas), and all except three counties have more than 75% out of service.² Without a functioning power grid, Open Mobile must rely on portable generators. In response to initial contacts with the Chairman’s office, the Commission has secured the delivery of generators allowing the company to begin serving some areas. Currently, around 25% of the cell sites in the capital of San Juan are functioning.³

¹ Brian Resnick and Eliza Barclay, “What Every American Needs to Know About Puerto Rico’s Hurricane Disaster,” Vox (Sept. 27, 2017), accessed at <https://www.vox.com/science-and-health/2017/9/26/16365994/hurricane-maria-2017-puerto-rico-san-juan-humanitarian-disaster-electricity-fuel-flights-facts>.

² Communications Status Report for Areas Impacted by Hurricane Maria (Oct. 3, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1003/DOC-347055A1.pdf.

³ Drew FitzGerald and Daniela Hernandez, “A Week After Maria’s Strike, Puerto Rico Remains Offline,” Wall Street Journal (Sept. 29, 2017), accessed at <https://www.wsj.com/articles/a-week-after-marias-strike-puerto-rico-remains-offline-1506714520> (noting that three-quarters of cell sites in the capital of San Juan remain off-line and the landline network remains largely off-line).

The hurricane's telecommunications impacts, which Chairman Pai has described as "catastrophic,"⁴ compound the ongoing humanitarian crisis as people are unable to call for help, properly organize relief efforts, or even get in touch with loved ones, to find out if they are safe. In some cases, hospitals lacking power have not been able to move critically ill patients to functioning medical facilities where they may receive treatment because family members could not be reached via telephone.⁵ Residents have had to travel significant distances to find spots where they can pick up a signal to call family on the U.S. mainland. Many cannot travel as they are trapped in communities cut off by roads blocked by debris or washed away altogether.⁶ Trucks cannot move emergency supplies such as food or water to places in need because dispatchers cannot be in contact with drivers.⁷ At night, the darkness and the chaotic recovery situation make for perilous conditions. Employees of Open Mobile cannot devote all their attention to the Company's recovery as they must worry about the safety of their families and property. Copper theft and fiber cuts add to the challenges of restoring service.⁸ Diesel fuel is being stolen from generators.

⁴ Chairman Pai Statement on Hurricane Maria (Sept. 21, 2017), accessed at https://apps.fcc.gov/edocs_public/attachmatch/DOC-346833A1.pdf.

⁵ Robin Respaut and David Graham, "Battered Puerto Rico Hospitals On Life Support After Hurricane Maria," REUTERS (Sept. 24, 2017), accessed at <https://www.reuters.com/article/us-storm-maria-puertorico-hospitals/battered-puerto-rico-hospitals-on-life-support-after-hurricane-maria-idUSKCN1BZ13S>.

⁶ Chandrika Narayan, "'Apocalyptic' Devastation in Puerto Rico, and Little Help in Sight," CNN (Sept. 26, 2017), accessed at <http://www.cnn.com/2017/09/25/us/hurricane-maria-puerto-rico/>.

⁷ Rachel Becker, "Trying to Communicate After the Hurricane: It's as if Puerto Rico Doesn't Exist," The Verge (Sept. 29, 2017), accessed at <https://www.theverge.com/2017/9/29/16372048/puerto-rico-hurricane-maria-2017-electricity-water-food-communications-phone-internet-recovery>.

⁸ Daniel Macht et al., "Cellphone Companies Struggle to Restore Service in Puerto Rico," NBC NEW YORK (Sept. 28, 2017), available at <http://www.nbcnewyork.com/news/national-international/Cell-Phone-Companies-Struggle-to-Restore-Service-in-Puerto-Rico-448569293.html>.

II. OPEN MOBILE'S NETWORK HAS SUFFERED CATASTROPHIC DAMAGE

Open Mobile's network has suffered unprecedented and catastrophic damage that the Company has not yet been able to fully quantify. For those areas where Open Mobile has been able to survey, it has discovered a variety of challenges crippling its network. So far, Open Mobile's survey indicates that 70% of cell towers require significant repair or outright replacement. Another 15% of towers located on buildings are either damaged or inaccessible due to building damage. Factors such as lack of access or lack of able workers who are cut off and unable to report are hampering a full accounting nearly two weeks following landfall.

Most important, the collapse of the electrical grid is preventing many cell sites from coming back on line. At this time, all of Open Mobile's cell sites lack electricity from the commercial grid. Fiber needed for backhaul has been cut, preventing restoration. Some cell sites have equipment inside of buildings that remain underwater, or are otherwise inaccessible due to damage. Some antennae are located on top of damaged buildings and need to be relocated, at least temporarily, until the building is repaired and power restored.

It will take months to complete a full accounting of losses, as Company workers access the areas most difficult to reach. These extraordinary circumstances demand extraordinary action. Accordingly, Open Mobile requests the Commission to use every tool it has and take immediate action to assist Open Mobile in rebuilding critical telecommunications infrastructure throughout Puerto Rico.

II. HIGH-COST SUPPORT SHOULD BE TEMPORARILY INCREASED

A. Catastrophic Damage Requires an Immediate Infusion of Additional Federal USF to Preserve Universal Service.

Much of the Company's rural infrastructure was built with the assistance of federal high-cost support. Without assistance, Open Mobile may soon be forced to make extraordinarily difficult triage choices regarding what can be restored, and whether it should be restored. To date, Open Mobile has identified at least \$25 million in losses, and that number is expected to grow significantly as a complete assessment is done. The Company must meet the challenges of restoring service and rebuilding its network during a time when it has no customer revenue – a situation that is expected to last for months.

Moreover, Open Mobile does not know the extent to which the damage will be covered by insurance, and any such coverage will not be provided until approximately one year from now. Open Mobile requires an immediate cash infusion to accelerate recovery efforts, to assist it in restoring service, including but not limited to the clearing and rebuilding of access roads to remote cell sites, acquisition of generators and the fuel to operate them, deployment of cells on wheels ("COWs"), and ordering new towers, replacement parts, and virtually all facilities essential to operating its network.⁹

The Company is appreciative of Chairman Pai's proposal to allow ETCs in the affected areas to elect to receive seven months' worth of high-cost support "immediately in order to expedite repair and restoration efforts."¹⁰ This emergency action is much needed and will

⁹ Open Mobile will supplement this Petition with additional information regarding the damage incurred by the hurricane and the costs of restoring service and rebuilding its network.

¹⁰ FCC Statement, "Chairman Pai Announces Proposal to Assist Efforts to Restore Communications Networks in Puerto Rico and U.S. Virgin Islands" (Oct. 3, 2017), accessed at:

assist Open Mobile in purchasing equipment and repair services. As Open Mobile understands it, however, support advanced would mean there would be a seven-month gap in support down the road.

Even received in advance, existing levels of support will not come close to meeting the need. Open Mobile requests the Commission, in addition to advancing support on an emergency basis, to temporarily increase support to Open Mobile so that recovery can be accelerated and abandonment of plant avoided.

Since June 30, 2014, support to Open Mobile has been frozen at 60% of the amount provided in 2011.¹¹ Open Mobile's 2011 baseline monthly support level was \$1,312,058. Now, it has lost more than half a million dollars in monthly support to the competitive ETC phase-down, currently receiving \$787,235 per month to support a network that covers the entirety of Puerto Rico that is inhabited.

Open Mobile requests the Commission to immediately provide supplemental high-cost support to assist Open Mobile in rebuilding the island's telecommunications infrastructure and ensure that the most remote areas receive relief at the earliest possible time.

http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1003/DOC-347017A1.pdf. See also FCC Fact Sheet, Connect America Fund Hurricane Maria Conditional Waiver (Oct. 3, 2017). According to the draft Order, the amount available to Open Mobile would be \$5,510,645. See *Connect America Fund*, WC Docket No. 10-90, Order, FCC-CIRC1710-01 (draft rel. Oct. 3, 2017).

¹¹ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform—Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*CAF Transformation Order*"), *aff'd sub nom. In re FCC 11-161*, 703 F.3d 1015 (10th Cir. 2014).

As of this date, when catastrophic losses are not yet fully quantifiable, Open Mobile asks that 100% of Open Mobile's legacy high-cost support be restored, beginning immediately and continuing through the end of Calendar Year 2019. This would mean supplemental support of \$524,823 per month for the last quarter of 2017, totaling approximately \$1.5 million, another \$6.3 million in 2018, and an identical amount in 2019, for a grand total of approximately \$14 million in supplemental support.

As Chairman Pai recognized in proposing to make support available in advance, the costs of restoring service and rebuilding the network are very much front-loaded. Accordingly, Open Mobile requests that the Commission allow Open Mobile to access \$14 million in supplemental support through CY 2019, paid in a single disbursement, at the earliest possible date.¹²

B. Open Mobile Will Provide the Commission with Evidence and Certifications That All Supplemental Support is Properly Expended.

Open Mobile fully understands that it must be fully accountable for supplemental support requested in this Petition. Open Mobile suggests that the Commission adopt accountability measures to ensure that all supplemental support provided pursuant to this Petition is properly invested in infrastructure and related direct recovery costs.

Open Mobile is prepared to submit periodic reports providing the Commission with a detailed accounting of all expenditures by category, and to include these expenses in its annual FCC Form 481 Report. The Company is prepared to demonstrate that all support is expended to cover losses not recoverable from insurance or other sources, so that there is no question about "double dipping." The Company is prepared to have a responsible official certify under

¹² Open Mobile submits that USAC has substantial excess funds on hand to meet such an emergency without the need to increase the contribution factor or take any other extraordinary actions.

penalty of perjury that the information supplied is accurate. The Commission is encouraged to send representatives to oversee Open Mobile's progress and to have USAC conduct oversight, as it does for Mobility Fund expenditures.

Open Mobile has a strong record of compliance with the rules and regulations adopted by the Commission and the Telecommunications Regulatory Board of Puerto Rico governing the use of high-cost support by ETCs. The Company is prepared to do whatever it takes to provide the Commission with all necessary evidence and assurance that federal funds are invested appropriately.

In the years leading up to the *CAF Transformation Order*, the Commission grappled with the need to have an insular-specific support mechanism that takes into account unique operating conditions in Puerto Rico and other similarly situated insular areas. As far back as 2005, the Commission proposed adoption of an insular-specific mechanism at the request of the Puerto Rico Telephone Company, specifically noting, among other things, "challenges which further complicate operations and increase costs including water-based erosion, unpredictable terrain, and operating in the Caribbean, which frequently faces hurricanes and tropical storms."¹³ It declined to adopt such a mechanism.

Open Mobile, along with DOCOMO Pacific, Inc., Choice Communications, LLC, and AST Telecom, LLC, made presentations to the FCC demonstrating special operating conditions present in Puerto Rico, the U.S. Virgin Islands, and American Samoa warranted special

¹³ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) at para. 31.

treatment for insular areas.¹⁴ In April of 2011, the parties filed Joint Comments urging, among other things, that Puerto Rico should receive special treatment because, “[T]he severe tropical weather in the Caribbean region also often requires frequent repair of existing telecommunications infrastructure due to storm damage.”¹⁵

In addition, three members of Congress wrote to Chairman Genachowski objecting to an April 2010 FCC decision to not create a special insular areas fund within the high-cost mechanism, noting among other things that Puerto Rico has “higher than average infrastructure deterioration due to severe tropical weather....”¹⁶ In response, the Commission provided assurance that it would “keep in mind your concerns and the unique barriers present in Puerto Rico and other insular areas.”¹⁷

In October 2011, Congressional representatives of several U.S. territories wrote to Chairman Genachowski and again emphasized the need for a special mechanism for insular areas, including Puerto Rico, given the severe challenges of serving these areas.¹⁸ Nonetheless, with respect to the Mobility Fund, the Commission declined to adopt an insular areas mechanism that took into consideration any special treatment for our nation’s insular areas.

¹⁴ See, e.g., Ex parte presentation of DOCOMO Pacific, Inc., PR Wireless, Inc., and AST Telecom, LLC, at <https://www.fcc.gov/ecfs/filing/6016058542>.

¹⁵ Joint Comments of DOCOMO Pacific, Inc., PR Wireless, Inc., Choice Communications, LLC, And AST Telecom, LLC d/b/a BlueSky Communications (April 18, 2011) <https://ecfsapi.fcc.gov/file/7021239874.pdf>, at p. 7.

¹⁶ See Letter from Nydia Velázquez, Joe Baca, and Silvestre Reyes to Hon. Julius Genachowski (June 25, 2010), a copy of which is enclosed as Exhibit A.

¹⁷ Letter from Hon. Julius Genachowski to Hon. Joe Baca (Aug 6, 2010) a copy of which is enclosed as Exhibit B.

¹⁸ See Letter from Madeleine Z. Bordallo, Eni F.H. Faleomavaega, Donna Christensen and Gregorio “Kilili” Camacho Sablan to Hon. Julius Genachowski (Oct. 4, 2011), a copy of which is enclosed as Exhibit C.

While it is impossible to know for certain whether the situation in Puerto Rico would be better today had special provisions for our nation's insular areas been adopted, Open Mobile asks the Commission to look to the future and permit Open Mobile to use supplemental support to harden its cell sites and to improve back-up facilities, its backhaul and switching facilities, and other network infrastructure to withstand future storms.

C. Open Mobile's Universal Service Contributions Through the End of Calendar Year 2017 Should Be Deferred Until the 2018 True-up Process.

Open Mobile also requests that the Commission provide it with temporary relief from USF contributions. With this unprecedented devastation to overcome, it is essential that Open Mobile have the maximum amount of cash on hand that is possible so that it can devote all of it to restoring and rebuilding on an expedited timetable. If Open Mobile's monthly USF contribution burden is alleviated during this recovery and rebuilding period, then it will be able to devote more funds to these efforts.

Because USF contributions are calculated based on projected collected revenues reported to USAC months in advance, Open Mobile will be required to pay USF contributions on revenues that far exceed the revenues it will actually collect from customers. Currently, the company is collecting virtually no revenue, and it will be unable to recoup any of its contribution burden in the form of itemized USF surcharges.

To alleviate this situation, Open Mobile requests the ability to revise its projections for the fourth quarter of 2017 down to zero. This requires a waiver of the 45-day revision period

for the Form 499-Q filed August 1, 2017.¹⁹ Open Mobile would be relieved from contribution burdens for all of the fourth quarter of 2017. Then, it would report the actual revenues on the Form 499-A it submits on April 1, 2018, and make up the difference in a true-up later in the year.

We submit that it is essential to ensure that Open Mobile does not pay excessive contributions, based on nonexistent customer revenue and without the ability to recoup those costs, when it needs to devote every available dollar to restoring essential service and rebuilding its network as the island emerges from this humanitarian crisis.

D. Enhanced Lifeline Discount.

With the widespread devastation and lack of utility service, the already suffering Puerto Rican economy is now decimated. Unemployment, already high compared to the mainland (10.1% as of August 2017, compared to 6.3%, the next-highest unemployment rate among the contiguous states),²⁰ will likely skyrocket to unprecedented levels and will remain high as the island rebuilds. This will make it more difficult than ever for Puerto Ricans to afford telecommunications service.

To make critical service available in Puerto Rico during the ongoing crisis, Open Mobile requests that the Commission adopt a temporary rule to increase the monthly discount level by \$25 for eligible customers of facilities-based ETCs in Puerto Rico through March 1, 2018. This

¹⁹ *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, 17 FCC Rcd. 24952, 24972 ¶ 36 (2002) (“2002 Contribution Methodology Order”); Telecommunications Reporting Worksheet, FCC Form 499-Q (2017).

²⁰ See Bureau of Labor Statistics, Local Area Unemployment Statistics, accessed Sept. 29, 2017, at <https://www.bls.gov/lau/>.

additional discount is equivalent to the “Tier 4” support the Commission made available to consumers in Tribal areas in its 2000 *Twelfth Report and Order*.²¹ That enhanced support was introduced address the significant challenges not only of serving extremely poor communities, but also constructing and deploying infrastructure in extremely hard-to-serve areas.

Open Mobile submits that the challenges of deploying service on an emergency basis, and of reconstructing network infrastructure in hurricane-devastated areas of Puerto Rico, are similar to the challenges of serving the most impoverished and remote Tribal areas. The availability of an additional \$25 in monthly support would enable Open Mobile to offer free or steeply discounted voice and data service to its customers who qualify for Lifeline.

There is precedent for this sort of Lifeline relief. In the aftermath of Hurricane Katrina, the Commission, among other forms of relief, adopted a temporary rule providing support from the Low-Income program for all households eligible for FEMA assistance in the affected areas.²² The relief was granted effective October 14, 2005, with support made available through March 1, 2006.²³ We ask for a similar period of temporary support, to be granted on an expedited basis and made available through March 1, 2018. Similar to post-Katrina Louisiana and Mississippi, thousands of people in Puerto Rico have been displaced from their homes, many

²¹ *Federal-State Joint Board on Universal Service*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12230-31 (2000) (“*Twelfth Report & Order*”); *stayed in part*, Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 17112 (2000).

²² See *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 16883, 16885 (2005) (“*Katrina Order*”).

²³ See *id.* at 16888-89.

living in temporary shelters, and may be without a permanent home or employment for a significant period of time.²⁴

Open Mobile submits that the enhanced discount level will help it meet the severe challenges of bringing service online quickly and rebuilding its network, and to provide a level of service that will help its customers in the wake of the extreme devastation brought by the hurricane.

E. Open Mobile Requests an Extension of Recently Granted Lifeline Waivers.

On September 7, 2017, the Wireline Competition Bureau granted a 90-day waiver of certain Lifeline-related deadlines to areas in Puerto Rico and the U.S. Virgin Islands that had been impacted by Hurricane Irma.²⁵ During the 90-day period, service providers in those areas were relieved of the requirement to send de-enrollment notifications to customers pursuant to the Commission's non-usage²⁶ and annual recertification²⁷ rules. At the end of the waiver period, service providers will be required to send de-enrollment notices to all customers who have gone 30 days or more without usage during the waiver period, as well as to all customers who are due to recertify in 2017. The 90-day waiver period will expire on December 6, 2017.

Open Mobile hereby requests an extension of the waivers currently in effect by another 90 days. The existing waiver was granted before it became clear that Hurricane Maria was going to hit many of the same areas and, in Puerto Rico, turn a bad situation into a catastrophic

²⁴ See *id.* at 16888.

²⁵ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Order, DA 17-860 (W.C.B. rel. Sept. 7, 2017).

²⁶ 47 C.F.R. §§ 54.405(e)(3), 54.407(c)(2).

²⁷ 47 C.F.R. §§ 54.405(e)(4), 54.410(f).

one. Given that it will take several months for the power grid to be restored, and that road and other infrastructure have been greatly damaged and disrupted, it will not be feasible for Open Mobile to conduct the required tracking and customer notification processes. Customer usage tracking will require access to systems that are currently down and will require reliable power and sufficient staffing by employees who will be devoted to emergency tasks and rebuilding for the foreseeable future. Mail delivery will not be reliable for an unknown period. Moreover, Open Mobile's Lifeline customers have suffered property damage and many have lost their homes. It will be unrealistic to expect customers in these circumstances to comply with the paperwork requirements for retaining critical Lifeline service.

Open Mobile emphasizes that it is not known how long the island will be without power, whether there will be sufficient fuel to power generators, when customers will be in living conditions that are conducive to mail delivery, the completion and delivery of forms, and other actions, and when the company's systems will be online and robust enough to perform the required tracking and other tasks. Should the Commission grant the requested extension, Open Mobile will assess the overall situation ahead of the expiration of the further waiver period and alert the Commission if it believes additional time will be needed.

III. THE REQUESTED WAIVERS ARE JUSTIFIED UNDER THE COMMISSION'S RULES

The Commission has authority to waive its rules if there is "good cause" to do so, and indeed the current circumstances are such that the Commission may act on its own motion without a detailed waiver analysis.²⁸

²⁸ See 47 C.F.R. § 1.3.

The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.²⁹ That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the “public interest” for a broad range of situations, does not relieve it of an obligation to seek out the “public interest” in particular, individualized cases. In fact, the Commission’s right to waive its rules is not unlike an obligation in that it is a *sine quo non* to its ability to promulgate otherwise rigid rules. It is the necessary “safety valve” that makes the system work.³⁰ In addition, a waiver can be granted where good cause is demonstrated,³¹ especially where hardship, equity, or more effective implementation of an overall policy on an individual basis warrant relief.³²

There is good cause for the requested waivers of the CETC phase-down rule and the USF contribution revision window. Strict enforcement of the phase-down rules will result in an insufficient level of support to meet the severe challenges of restoring service to Puerto Rico’s citizens and rebuilding network infrastructure after an unprecedented level of devastation across the island. Similarly, strict enforcement of the rules requiring payment of USF contributions based on projected revenues would frustrate the statutory dictate that contributions be assessed on an equitable and nondiscriminatory basis, as the complete lack of

²⁹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), *cert. denied*, 409 U.S. 1027 (1972).

³⁰ See *WAIT Radio*, 418 F.2d at 1157, 1159.

³¹ 47 C.F.R. § 1.3. The Commission may waive a rule where the circumstances of the case render strict compliance to the rule is inconsistent with the public interest. See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1165 (D.C. Cir. 1990).

³² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969).

customer revenue puts the Company at a severe disadvantage, and drains critically needed funds at a time when the Company is without revenue.³³ The extension of the existing waivers of Lifeline non-usage and recertification rules is justified because Hurricane Maria multiplied the scope and severity of the human, economic and infrastructure devastation that existed at the time the initial waiver was granted.

IV. REQUESTED RELIEF

Open Mobile requests a waiver of the CETC phase-down rule, 47 C.F.R. § 54.307(e)(2), to restore its level of monthly support to its baseline 2011 support level through EOY 2019. Open Mobile further requests a waiver of the same rule to the extent it requires disbursements to be made on a monthly basis, to allow Open Mobile to receive all support to which it is entitled through EOY 2019 in a single lump-sum payment.

Open Mobile also requests a waiver of the 45-day revision period for Form 499-Q, to enable it to revise its November 1, 2017 Form 499-Q down to zero to reflect a revised projection for the fourth quarter of 2017. Open Mobile accepts that it will pay the contribution based on actual revenues for that quarter in the annual true-up process in 2018.

In addition, Open Mobile requests the adoption of temporary rules, comparable to what was adopted post-Katrina, allowing the customers of facilities-based providers in Puerto Rico to receive an additional \$25 in monthly Lifeline support through March 1, 2018.

³³ 47 U.S.C. § 254(d).

Open Mobile requests a further 90-day waiver of 47 C.F.R. §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2) and 54.410(f), beyond the 90-day waiver granted on September 7, 2017.

Open Mobile is prepared to supplement this Petition with information or certifications that the Commission may need to complete its review and analysis.

V. CONCLUSION

For all of the reasons set forth above, Open Mobile requests waiver of the aforementioned High-Cost, USF contribution, and Lifeline rules so that it can quickly restore wireless service amid the ongoing humanitarian crisis in Puerto Rico, and to rebuild critical infrastructure as the island begins the long recovery process.

Respectfully submitted,

PRWireless, Inc.



By : _____

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Its Attorneys

October 4, 2017

Letter from Nydia Velázquez, Joe Baca, and Silvestre Reyes to Hon. Julius Genachowski (June 25, 2010).

Congressional Hispanic Caucus

United States Congress

Washington, DC 20515

CHAIRWOMAN

NYDIA M. VELAZQUEZ

12TH DISTRICT, NEW YORK

June 25, 2010

*WCB
High Cost
PV
JG
1074*

The Honorable Julius Genachowski
Chairman, Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20544

Dear Chairman Genachowski:

We are writing to encourage you to reconsider the April 16, 2010 order issued by the Federal Communications Commission (FCC) denying the adoption of a new high-cost area support mechanism to address the telecommunications needs of Puerto Rico. The Congressional Hispanic Caucus (CHC) is concerned that the failure to implement an insular-specific Universal Service Fund (USF) support mechanism, in contravention of a 1996 congressional mandate, has deprived the residents of Puerto Rico of the benefits of having a variety of telecommunications and information services.

The FCC's decision ignores undisputed data showing that Puerto Rico has extremely low wireline telephone and broadband penetration rates, very high maintenance costs resulting from its mountainous topography, and higher than average infrastructure deterioration due to severe tropical weather and atmosphere associated with its location in the Caribbean. In addition, because Puerto Rico is an island, costs are made even higher because materials and supplies must be transported into Puerto Rico.

While the most recent Census data reported that the telephone penetration rate in Puerto Rico was 91%, recent surveys by the FCC place the figure at only approximately 75%. Both figures are significantly below the U.S. mainland penetration rate of 98.2%. In the area of broadband penetration, the FCC's Wireline Bureau reported in February 2010 that only 24% of households in Puerto Rico have access to high-speed Internet, compared to 60% access in the United States mainland. Despite these extraordinary conditions, and the mandate contained in the Telecommunications Act of 1996 that consumers in insular and high-cost areas have reasonably comparative telecommunications and information services to those available in urban areas, the FCC has denied the special consideration which consumers in Puerto Rico warrant.

In its order denying insular funding to Puerto Rico, the FCC appears to have taken the position that the problems associated with telephone and broadband penetration in Puerto Rico can be resolved by wireless service. By dictating that telephone and broadband penetration problems must be resolved through wireless services, the FCC is treating the

Island differently than the rest of the nation, which continues to have the benefit of USF support of both wireline and wireless systems. Thus, the FCC seems to be superimposing its technology policies, many of which are now being reviewed by Congress, without consideration for the documented needs of the people of Puerto Rico.

Furthermore, the maintenance, deployment and upgrading of Puerto Rico's wireline infrastructure is essential to the delivery of broadband services because it is the infrastructure that delivers these services to consumers. Without insular high-cost area support of Puerto Rico's wireline infrastructure, the digital divide between Puerto Rico and the rest of the nation will continue to persist and to widen. Although we are aware that the FCC has proposed to provide some additional monies to low-income consumers in Puerto Rico by slightly increasing the amount of the subsidy available under its Link Up program, this proposal is not sufficient to upgrade and extend wireline infrastructure in Puerto Rico.

We believe that the FCC's denial of insular high-cost area USF support is contrary to the mandate of Congress that the FCC ensure that every citizen have comparable access to telecommunications services. We strongly urge you to grant the Petition for Reconsideration which is currently pending.

We appreciate your timely and prompt action in this matter. If you have any questions, please contact Patricia Villarreal, CHC Executive Director, at (202) 225-2410.

Sincerely,

Nydia Velázquez
Chair
Congressional Hispanic Caucus

Joe Baca
Co-Chair
CHC, Communications, Technology
and the Arts Task Force



Silvestre Reyes
Co-Chair
CHC, Communications, Technology
and the Arts Task Force

Letter from Hon. Julius Genachowski to the Honorable Joe Baca (Aug 6, 2010).



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

August 6, 2010

The Honorable Joe Baca
U.S. House of Representatives
2245 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Baca:

Thank you for your letter regarding the Commission's April 16, 2010, *Order and Notice of Proposed Rulemaking (NPRM)* in which it declined to adopt the high-cost support mechanism proposed by the Puerto Rico Telephone Company (PRTC). I understand your concerns, and I firmly believe that ongoing improvement and lasting benefits for Puerto Rico are dependent on comprehensive universal service fund reform.

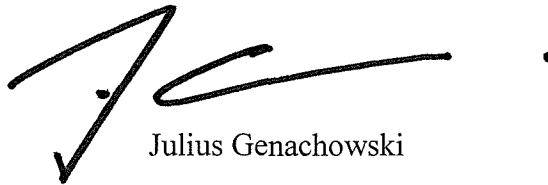
In the *Order and NPRM*, the Commission acknowledged that there may be a significant number of low-income consumers in Puerto Rico who lack access to voice telephone service because they are unable to afford line connection charges when new facilities must be built to reach them. Nevertheless, the record revealed dramatic increases in telephone subscribership in Puerto Rico, with telephone subscribership rising from 73.8 percent to 91.9 percent between 2005 and 2008. In light of these positive developments, we found that it was not necessary to provide a separate universal service high-cost support mechanism for non-rural insular carriers. Instead, the *Order and NPRM* proposed targeted changes to our rules to help eligible consumers in Puerto Rico take better advantage of existing universal service low-income support programs. The proposed rules would provide additional funding through the Link-Up Program to help offset special construction charges incurred by consumers when facilities must be built to provide them with access to voice telephone service. By removing an impediment to affordable voice telephone service, we hope to further close the gap in telephone subscribership rates between the Commonwealth and non-insular areas.

For a permanent solution, I am committed to accomplishing comprehensive reform of universal service – as recommended in the National Broadband Plan – to provide a more efficient and effective vehicle for addressing service issues in insular and high-cost areas like Puerto Rico. On April 21, 2010, the Commission began the process of transitioning legacy universal service high-cost support to a new high-cost program that would support broadband as well as voice services. The April 21st *Notice of Inquiry and NPRM* examines near- and longer-term processes to target funding toward new deployment of broadband networks in unserved areas while considering final rules to implement a new Connect America Fund (CAF) mechanism that efficiently ensures universal access to broadband and voice services. As the Commission comprehensively reforms universal service and implements the National Broadband

Plan recommendations, you have my personal assurance that we will keep in mind your concerns and the unique barriers present in Puerto Rico and other insular areas.

Thank you for your interest in this important matter. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small dot.

Julius Genachowski

Letter from Madeleine Z. Bordallo, Eni F.H. Faleomavaega, Donna Christensen and Gregorio “Kilili” Camacho Sablan to Hon. Julius Genachowski (Oct. 4, 2011).

Congress of the United States
Washington, DC 20515

October 4, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Dear Chairman Genachowski,

We are writing to urge the Federal Communications Commission (FCC) to recognize the unique economic, social and geographic challenges facing the U.S. Virgin Islands, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa (the "Insular Areas") and to adopt specific universal service support mechanisms for the Insular Areas. Such tailored universal service support mechanisms are essential to ensure that the residents of the Insular Areas have access to affordable voice and broadband communications services that are reasonably comparable to the services available in urban areas, consistent with Congress' mandate in Section 254(b)(3) of the Communications Act of 1934, as amended.

Specifically, we urge the Commission to adopt an alternative universal service reform approach for the Insular Areas by exempting insular carriers from any phase-down of, or caps on, current levels of high-cost support. We also urge the Commission not to implement a reverse auction mechanism for broadband funding in the Insular Areas. However, if the Commission implements a reverse auction for such funding, we urge the Commission to set aside funding specifically for broadband deployment in the Insular Areas. We also encourage the Commission to exempt Insular Areas from its prior decision to cap support for competitive carriers at March 2008 levels. That cap has harmed, and continues to harm, consumers in the Insular Areas by hindering the ability of wireless carriers to deploy infrastructure and deliver voice and broadband service. We believe that phasing-down support from the already reduced cap levels could be devastating to consumers in the Insular Areas. Further, we would request that the Commission include in their final regulations a policy that would prohibit any carrier who receives FCC funding from charging international rates for calls to the Insular Areas from the mainland. Unfortunately, the U.S. District Court of Appeals for the District of Columbia circuit ruled overruled an FCC ruling that indicated rate integration rules require telephone providers to provide adequate and affordable coverage to non-contiguous domestic locations based on equivalent rates of comparable distances in the contiguous 48 states. We believe as USF funding regulations are being contemplated that this is a key opportunity to re-affirm and implement an important previous FCC ruling.

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
October 4, 2011
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We commend the Commission for asking whether there are “unique circumstances in insular areas that would necessitate a different USF regime.” We firmly believe that there are unique circumstances, and as a result, carriers serving the Insular Areas must be treated differently than carriers serving the 50 states as the Commission proceeds with its universal service reforms.

The Insular Areas face a host of significant challenges that make it difficult to achieve significant broadband penetration. First, the Insular Areas are remote, and as a result, the cost of shipping, deploying, and maintaining telecommunications infrastructure is much higher than on the U.S. mainland. Second, the Insular Areas experience severe tropical weather, including cyclones and hurricanes, and are located in active earthquake zones. Third, the Insular Areas suffer from high unemployment and other negative effects from the recent economic downturn. For example, according to the most recent unemployment figures, Guam’s rate is 13.3%, Puerto Rico’s rate is 17.2% in Puerto Rico, and American Samoa’s rate is 29.8%. It is these high unemployment and high poverty levels in the Insular Areas that inhibit access to telephone service. A staggering portion of the population in the U.S. territories live below the poverty line – 23% in Guam; 23.8% in the USVI; 44.8% in Puerto Rico; and 61% in American Samoa. Finally, in some Insular Areas, there is no pervasive wireline infrastructure of the kind taken for granted on the mainland. Without access to wireline service, consumers are especially dependent on wireless networks for critical communications.

The Commission has rightfully carved out an exemption from the March 2008 cap for carriers in tribal lands, including Alaska, primarily on the basis that these areas are costly to serve, are generally remote, have low telephone penetration levels and suffer unique economic hardships. The Insular Areas are much like tribal lands on these measures, and thus, the same exemption should apply.

We are well aware of the Commission’s National Broadband Plan, and the agency’s focus on transitioning to a new program that will support broadband services, as well as voice services. However, significant portions of the Insular Areas do not yet have the same types of telecommunications services that are available to residents of the fifty states. Thus, sufficient high-cost support for the Insular Areas must be available to complete – and enhance – the deployment of both voice and broadband services. One approach to doing so would be to adopt a rule that expressly permits service providers to utilize high-cost support for broadband infrastructure that complements the maintenance and support of existing networks. This would enable telecommunications carriers in the Insular Areas to focus on improving access to basic communications services, while

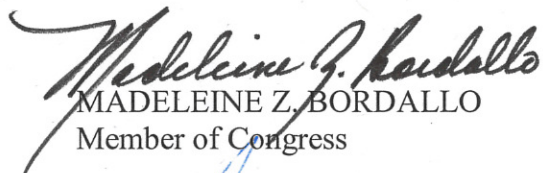
The Honorable Julius Genachowski
Chairman
Federal Communications Commission
October 4, 2011
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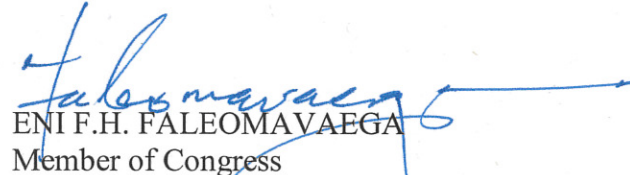
advancing the Commission's objective of "[e]nsuring all people have access to broadband."

We appreciate the Commission's attention to and consideration of this request. It is important to finally recognize the unique challenges facing the Insular Areas, and to adopt appropriate – and specially tailored – universal support mechanisms for carriers serving the U.S. territories, including exempting insular carriers from any phase-down of – or caps on – current levels of high-cost support.

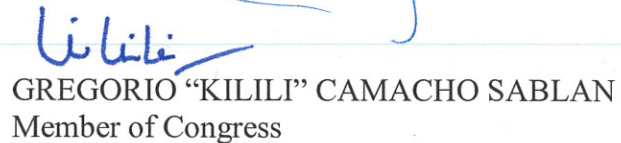
Sincerely,

Sincerely,


MADELEINE Z. BORDALLO
Member of Congress


ENI F.H. FALEOMAVAEGA
Member of Congress


DONNA CHRISTENSEN
Member of Congress


GREGORIO "KILILI" CAMACHO SABLAN
Member of Congress